

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24

FILED BY CLERK

JUL 23 2010

COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

ANDRE DENNISON,)	2 CA-CV 2010-0018
)	DEPARTMENT A
Plaintiff/Appellant,)	
)	<u>MEMORANDUM DECISION</u>
v.)	Not for Publication
)	Rule 28, Rules of Civil
ARIZONA DEPARTMENT OF)	Appellate Procedure
CORRECTIONS, RON CREDIO, and)	
WILLIAM WHITE,)	
)	
Defendants/Appellees.)	

APPEAL FROM THE SUPERIOR COURT OF PINAL COUNTY

Cause No. S1100CV200903121

Honorable Robert Carter Olson, Judge
Honorable Craig A. Raymond, Judge Pro Tempore

AFFIRMED

Andre Dennison

Florence
In Propria Persona

Terry Goddard, Arizona Attorney General
By Paul E. Carter

Tucson
Attorneys for Defendants/Appellees

H O W A R D, Chief Judge.

¶1 Appellant Andre Dennison appeals from the superior court's order declining to accept jurisdiction of his complaint for special action and dismissing the action against appellees Arizona Department of Corrections, Ron Credio, and William White (collectively "ADOC"). For the reasons discussed below, we affirm.

Factual and Procedural Background

¶2 We view the facts in the light most favorable to upholding the superior court's ruling. *Hornbeck v. Lusk*, 217 Ariz. 581, ¶ 2, 177 P.3d 323, 324 (App. 2008). Dennison, an inmate in the custody of ADOC, received various personal-hygiene items in April 2009. ADOC confiscated the items, however, because they had been purchased from a source other than the ADOC inmate store.

¶3 Claiming that his property had been confiscated contrary to ADOC policy, Dennison filed a complaint for special action relief against ADOC in superior court. In his complaint, Dennison stated he had exhausted his administrative remedies in the case and requested, inter alia, that the court order ADOC to return the items to him and enjoin ADOC from confiscating any similar property in the future. The court ordered ADOC to file a response to Dennison's petition within thirty days. In the same order, the court also stated that Dennison would have thirty days to file a reply to ADOC's response.

¶4 After ADOC filed its response but before Dennison had replied or the stated thirty days had passed, the superior court issued an unsigned minute entry declining to accept jurisdiction of Dennison's special action. In what he characterized as a motion for new trial, Dennison subsequently asked the court to reconsider its decision.

The court implicitly denied Dennison's request and again declined jurisdiction. The court also dismissed the complaint with prejudice. Dennison appeals from these orders.

Discussion

Standing

¶5 Preliminarily, we address ADOC's contention that Dennison lacks standing to challenge the confiscation of his hygiene items because, as Dennison concedes, he did not purchase them. Although Dennison had not bought the items himself, they were sent to him, and he therefore owned them or at least had a possessory interest in the items when they were confiscated. *See Aegis of Ariz., L.L.C. v. Town of Marana*, 206 Ariz. 557, ¶ 18, 81 P.3d 1016, 1021-22 (App. 2003) (to have standing, party must have personal stake in outcome of case); *State v. Berryman*, 178 Ariz. 617, 623, 875 P.2d 850, 856 (App. 1994) ("standing [may] stem from an interest in seized property"). We therefore reject ADOC's contention that Dennison lacks standing to challenge its confiscation of his property and address Dennison's appeal.

Dismissal of Special Action

¶6 Dennison argues the superior court committed reversible error because it ruled on the merits of his complaint for special action while at the same time declining to accept jurisdiction of it. We review for an abuse of discretion a superior court's decision to decline jurisdiction of a special action or to rule on the action's merits. *Files v. Bernal*, 200 Ariz. 64, ¶ 2, 22 P.3d 57, 58 (App. 2001).

¶7 In his complaint for special action, Dennison claimed the superior court should accept jurisdiction of his special action because he lacked “an equally plain, speedy, and adequate remedy” for ADOC’s allegedly impermissible confiscation. In its final judgment, the court stated it was declining to accept jurisdiction over Dennison’s case “for the reasons set forth in [ADOC’s] Response [to Dennison’s complaint for special action],” which included ADOC’s claim that Dennison had failed to exhaust his administrative remedies.

¶8 By declining to accept jurisdiction of Dennison’s complaint for special action on the ground he had failed to first exhaust his administrative remedies within the ADOC, the superior court did not rule on the merits of Dennison’s claim of illegal confiscation, as Dennison asserts. Rather, the court addressed the procedural issue of whether Dennison had failed to exhaust ADOC’s internal administrative remedies following the confiscation of his hygiene items. *See Minor v. Cochise County*, 125 Ariz. 170, 172, 608 P.2d 309, 311 (1980) (party must exhaust administrative remedies before bringing action in superior court); *see also Sw. Soil Remediation, Inc. v. City of Tucson*, 201 Ariz. 438, ¶ 12, 36 P.3d 1208, 1212 (App. 2001). Accordingly, we need not decide whether a superior court may decline special action jurisdiction while at the same time ruling on the merits of the special action because the court did not do so here, and Dennison’s contention is therefore meritless.

Procedural Irregularities

¶9 Dennison also argues that, even if the superior court did not erroneously rule on the merits of his claim, the court nevertheless erred by declining to accept special action jurisdiction before the expiration of the time it had granted him to file a reply to ADOC's response. We review a superior court's "determination to accept or decline jurisdiction in a special action for an abuse of discretion." *Pima County Assessor v. Ariz. State Bd. of Equalization*, 195 Ariz. 329, ¶ 8, 987 P.2d 815, 818 (App. 1999); *see also Amos v. Bowen*, 143 Ariz. 324, 327, 693 P.2d 979, 982 (App. 1984). "An abuse of discretion occurs when 'the reasons given by the court for its action are clearly untenable, legally incorrect, or amount to a denial of justice.'" *State v. Fish*, 222 Ariz. 109, ¶ 8, 213 P.3d 258, 263 (App. 2009), *quoting State v. Chapple*, 135 Ariz. 281, n.18, 660 P.2d 1208, 1224 n.18 (1983).

¶10 After expressly having granted Dennison "30 days [after the filing of ADOC's response] to file any reply he deem[ed] appropriate," the superior court filed its minute entry declining special action jurisdiction before Dennison had filed a reply and before the expiration of the time allotted.

¶11 Before the superior court entered its final judgment, Dennison filed what he characterized a "Motion for New Trial" but was effectively a motion for reconsideration. In it, he replied to the state's assertion that he had not exhausted his remedies within the ADOC, claiming that he effectively had done so because ADOC "had been blocking [his] access to the grievance process by refusing to process [his] grievances." Dennison's

motion refers to an exhibit in support of his contention that he had exhausted his administrative remedies, but no exhibit appears actually to have been filed. The court's final judgment declining jurisdiction followed on December 1, 2009.

¶12 Although the superior court issued no order explicitly ruling on his motion for reconsideration, as Dennison emphasizes on appeal, the final judgment—filed three weeks after Dennison's motion for reconsideration—states that the court had reviewed “all matters of record in its file” and declined to take jurisdiction. Therefore, because the court had an opportunity to review Dennison's motion before entering its final judgment, the motion effectively could be considered the reply of which Dennison previously had been deprived.

¶13 Given the sequence and timing of the filings, we conclude that Dennison had an adequate opportunity to make his case to the superior court, despite the alleged procedural irregularities. Nevertheless, Dennison failed either to rebut ADOC's claim that he had not exhausted his administrative remedies or to show that he might have been excused from doing so.¹ And a party is required to exhaust available remedies before instituting a special action. *Minor*, 125 Ariz. at 172, 608 P.2d at 311 (“It is a well

¹The parties make various assertions in their motions to strike filed in this court as to the propriety of arguments made on appeal and documents that may or may not have been included in the record below. Without deciding any of these issues specifically, we note that ADOC's response below included a copy of Dennison's grievance appeal filed with ADOC on July 24, 2009. Dennison filed his complaint for special action on July 30, 2009. Without a final decision by ADOC proving the contrary, the fact that a mere six days had elapsed is sufficient to demonstrate that Dennison's administrative remedies had been neither exhausted nor frustrated by inaction on the part of ADOC. Therefore, Dennison has failed to effectively rebut ADOC's failure to exhaust defense.

recognized principle of law that a party must exhaust his administrative remedies before appealing to the courts [via special action.]”). Consequently, the court did not abuse its discretion in declining to accept jurisdiction of Dennison’s complaint for special action.

Dismissal with Prejudice

¶14 Dennison finally asserts that, even if the superior court did not err in declining to accept jurisdiction of his special action, it nevertheless erred in dismissing the complaint with prejudice. ADOC concedes that Dennison’s complaint should not have been dismissed with prejudice but claims this court need not consider the issue because Dennison failed to raise it below and therefore has failed to preserve it.

¶15 After the superior court issued its initial unsigned ruling declining jurisdiction over Dennison’s special action, ADOC submitted a proposed form of judgment to the court. The language of ADOC’s proposed form of judgment is identical to the one the court ultimately signed and provided for a dismissal of Dennison’s complaint for special action with prejudice. The court then informed Dennison in a minute entry that it would adopt ADOC’s proposed form of judgment unless an objection was filed. Dennison filed an objection, in which he objected to several portions of the proposed judgment but not to the clause stating the action would be dismissed with prejudice. Because Dennison thus failed to object to the proposed dismissal of his complaint with prejudice, he has waived the issue on appeal. *See Lemons v. Showcase Motors, Inc.*, 207 Ariz. 537, n.1, 88 P.3d 1149, 1153 n.1 (App. 2004). We therefore need not address whether the court erred in dismissing the action with prejudice.

Disposition

¶16 Based on the foregoing, we affirm the superior court’s decision declining to accept jurisdiction of Dennison’s complaint for special action.

/s/ Joseph W. Howard
JOSEPH W. HOWARD, Chief Judge

CONCURRING:

/s/ J. William Brammer, Jr.
J. WILLIAM BRAMMER, JR., Presiding Judge

/s/ Philip G. Espinosa
PHILIP G. ESPINOSA, Judge